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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/594,070	06/14/2000	Terry L. Oehrke	1234	7636

7590

06/06/2005

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EXAMINER

DELGADO, MICHAEL A

ART UNIT	PAPER NUMBER
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2144

DATE MAILED: 06/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/594,070

Applicant(s)

OEHRKE, TERRY L.

Examiner

Michael S. A. Delgado

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Reopening Prosecution

In view of the Appeal Brief filed on 20 December 2004, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claim 1-4, 7-12 and 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,438,583 by McDowell et al. in view of US Patent No. 5,974,122 by Nelson et al.

In claim 1, McDowell teaches about a method for providing a messaging service on a computer network, the method comprising the steps of (Fig 1):

- (a) routing a message to a messaging server "old ISP email server"(Col 1, lines 45-60);
- (b) providing the message to a relay server "re-route server" when the message is undeliverable to the messaging server (Col 1, lines 45-60); and

But fails to teach (c) re-routing the message from the relay server to the messaging server when operational.

The concept of re-routing a message to relay server "message platform" after a failure to deliver to a destination and then delivering when the destination operable is well known in the art as disclosed by Nelson (Fig 4) (Col 6, lines 5-25). McDowell indicated that there was a need to prevent message from being undeliverable "bouncing" (McDowell Col 1, lines 30-40). Nelson teaches a improve way of delivery message when the destination is not available (Nelson Col 6, lines 5-25). With this combination, the problem of bouncing will be eliminated and the delivery of important messages will be guaranteed. It would have been obvious at the time of the invention for some of ordinary skill to provide a rerouting scheme to insure that important messages are delivered to their destination despite a failure occurring at the destination.

In claim 2, McDowell combines with Nelson, teaches about a method of Claim 1 further comprising:

(d) invoking another messaging server “new ISP email server” when the message is undeliverable to the messaging server “old ISP email server” in step (c) (McDowell Col 1, lines 45-60) (Fig 1).

In claim 3, McDowell combines with Nelson, teaches about a method of Claim 2 further comprising:

(e) routing the message to the other messaging server of step (d) (McDowell Col 1, lines 45-60), (Fig 1).

In claim 4, McDowell combines with Nelson, teaches about a method of Claim 3:
further comprising (f) storing the message (McDowell Col 7, lines 1-10); and
wherein step (e) comprises changing server information of the stored message (McDowell Col 7, lines 1-10).

In claim 7, McDowell combines with Nelson, teaches the method of Claim 1 further comprising:

(d) sending the message to the messaging server in response to step (c) (Covered in claim 1).

In claim 8, McDowell combines with Nelson, teaches about a method of Claim 3 further comprising:

(f) sending the message to the other messaging server in response to step (e) (McDowell Col 1, lines 45-60).

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In claim 9, McDowell teaches about a computer network for providing a messaging service, the network comprising:

a messaging server “old ISP email server” (McDowell Col 1, lines 45-60);

a DNS server operable to route a message to the messaging server (McDowell Col 5, lines 20-40) (McDowell Col 8, lines 1-15) (The DNS function is incorporated in the re-route server); and

a relay server “re-route server” operably connected to the DNS server and the messaging server, the DNS server operable to provide the message to the relay server when the messaging server is inoperable such that the message is undeliverable to the messaging server (McDowell Col 8, lines 1-15);

wherein the relay server is operable to re-route the message from the relay server to the messaging server when operational (Covered in claim 1).

In claim 10, McDowell combines with Nelson, teaches about a network of Claim 1 further comprising:

another messaging server “new ISP email server”, the other messaging server invoked by the relay server when the messaging server “old ISP email server” is inoperable such that the message is undeliverable to the messaging server in response to the re-routing (McDowell Col 1, lines 45-60), (Fig 1).

In claim 11, McDowell combines with Nelson, teaches about a network of Claim 10 wherein the relay server is operable to route the message to the other messaging server (McDowell Col 1, lines 45-60), (Fig 1).

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In claim 12, McDowell combines with Nelson, teaches about a network of Claim 11 further comprising:

a storage device operably connected to the relay server and the other messaging server, the message being stored in the storage device (McDowell Col 7, lines 1-10); and

wherein the relay server is operable to change server information of the stored message to route the message to the other messaging server (McDowell Col 7, lines 1-10).

In claim 15, McDowell combines with Nelson, teaches about the network of Claim 9 wherein the relay server is operable to send the message to the messaging server in response the re-routing (McDowell Col 1, lines 45-60).

In claim 16, McDowell combines with Nelson, teaches about a network of Claim 11 wherein the relay server is operable to send the message to the other messaging server in response to routing the message to the other messaging server (McDowell Col 1, lines 45-60), (Fig 1).

In claim 17, McDowell combines with Nelson, teaches about a network of Claim 9 wherein the messaging server and the relay server are within a first data center (Fig 1).

In claim 18, McDowell combines with Nelson, teaches about a network of Claim 10 wherein the messaging server and the other messaging server are in first and second data centers, the first data center remote from the second data center (Fig 1).

In claim 19, McDowell combines with Nelson, teaches about a network of Claim 9 wherein the relay server is operable to invoke a process to create another messaging server with a same name and IP address (McDowell Col 5, lines 15-40).

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Claim 5-6, 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,438,583 by McDowell et al. and US Patent No. 5,974,122 by Nelson et al in view of US Patent No. 6,182,224 by Doshi et al.

In claim 5 McDowell and Nelson teach all the limitation except the action of periodically attempting to deliver a message to the message server.

Doshi teaches about a messaging system in which a destination node is check periodically to determine if destination node is ready to receive a message (Col 15, line 50 -Col 16, line 15). It would have been obvious at the time of the invention for some one of ordinary skill to periodically poll a destination server to insure that it is available to receive a message.

In network operation, there are different types of failures. Some failures are more permanent while others are temporary. In the case of a temporary failure, service can be reinstated as soon as the destination is available without going through the complication of rerouting. To avoid the complication of rerouting, the destination server is poll periodically for predetermine period until there is some certainty that the failure is serious. In this scenario, a more complex rerouting is needed to deliver the message.

In claim 6 and 14, McDowell combines with Nelson and Doshi, teaches about a method of Claim 5 further comprising:

(d) invoking another messaging server when the message is undeliverable to the messaging server in step (c) (McDowell Col 1, lines 45-60).

In claim 13 the network of Claim 9 wherein the relay server is operable to periodically attempt delivery of the message from the relay server to the messaging server (Covered in claim 5).

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In claim 14, McDowell combines with Nelson and Doshi, teaches about a network of Claim 13 wherein the relay server is operable to invoke a process to create another messaging server when the message is undeliverable to the messaging server in response to the re-routing (Col 1, lines 45-60), (Fig 1).

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US patent No. 6,108,709 by Shinomura teaches about a data sending apparatus for message transmission to external receiving terminal - has user interface to message input with first database for address information and second database for temporary storage of message, with associated sending mechanism together with alternate forwarding arrangement

US patent No. 6,542,934 by Bader et al., teaches about a non-disruptively rerouting network communications from a secondary network path to a primary path.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael S. A. Delgado whose telephone number is (571) 272-3926. The examiner can normally be reached on 7.30 AM - 5.30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571) 272-3923

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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